on the parties both in matters of law and in matters of fact unless it is proved there has been fraud or corruption on his part or there be some mistake of law apparent on the face of the award. — See *Hodgkinson* v. *Fernie & Anor.*[1] It has also been held as settled law as early as 1898 in *Montgomery Jones & Co.* v. *Liebenthal & Co.*[2] that the following grounds would constitute good grounds for the court to remit an award, namely: —

(1) that the award is bad on the face of it;

(2) that there has been misconduct on the part of the arbitrator;

(3) that there has been an admitted mistake and the arbitrator asks that the matter be remitted; and

(4) where additional evidence has been discovered after the making of the award.

However, as Diplock said in *Marqulies Brothers Ltd.* v. *Dafnis Thomaides & Co. Ltd.*[3] the court is by no means limited to the 4 grounds referred to although "I should naturally hesitate before exercising my discretion to remit a case which does not come within any one of the four categories there approved."

The award may properly be remitted if, for example, it is genuinely ambiguous or confusing or otherwise unclear as in *Marqulies Brothers Ltd.* v. *Dafnis Thomaides & Co. Ltd.* case. In that case the award did not specify the sum to be paid although the method of calculating it was indicated and not in dispute. The applicants applied for the award to be remitted to the arbitrator, so that the amount to be paid to them could be computed and the award amended so as to become enforceable. It was held that on those facts it was clear that on the face of the award it was uncertain and therefore bad and a proper case for remission. I was, however, unable to come to the same conclusion on the facts of this case. There is nothing ambiguous, confusing or uncertain in the language of the arbitrator in paragraph 1(ii) of the award.

There is nothing to show that the award or any part of it, contains any error on the face of it. The applicants having "doubts", however genuine, could not constitute sufficient ground to remit the award. In my opinion therefore there was no merit in the application for remission.

Accordingly the application was dismissed with costs.

Application dismissed.

Solicitors: *Chooi & Co.; Skrine & Co.*

VERAMA v. AMARUGAM & ANOR.

[O.C.J. (Arulanandom J.) April 12, July 18, September 26 & November 7, 1977; January 9 & 30, 1978; May 28, 1979; January 26, March 23, April 27, June 8, July 13 & August 5, 1981 & September 2, 1981]

[Penang — Civil Suit No. 153 of 1977]

Land Law — Premises as part of land — Claim by registered proprietor — Laws under National Land Code not to be tempered by Equity.

The plaintiff claimed against the defendants as administrators of the estate of one Gopal and in their respective personal capacities for premises Nos. 3141, 3142 and 1600 erected on the plaintiff's land. The plaintiff was the registered proprietor of the said land.

The defendants relied on the doctrine of equitable estoppel. They submitted that the plaintiff had permitted the said houses to be built and that the plaintiff had agreed that:— (1) Gopal (deceased) and his heirs and beneficiaries would be able to occupy and live in the said premises No. 1600 as long as they wished and (2) that Lingam s/o Gopal would be able to live and rent out buildings Nos. 3141 and 3142 as long as he wished.

Held, allowing the plaintiff's claim: (1) the land laws are governed by the National Land Code which does not allow the law to be tempered by equity;

(2) the defendants were at the most gratuitous licensees and in the case of the first defendant the licence granted to her household died with her husband. House No. 1600 did not form part of the estate of Gopal for being an immovable it was part of the plaintiff's land. To hold otherwise would be in direct conflict with the principles of registered proprietorship of land under the National Land Code;

(3) the defendants as administrator of the estate of Gopal had no interest whatsoever in houses Nos. 3141 and 3142 which, as claimed by the defendants themselves, were built by one Lingam;

(4) under the provisions of the National Land Code, the title of the registered proprietor is indefeasible unless it is obtained by fraud, mistake, undue influence etc. In this case there is no such allegation; the defendants could not resist the declaration prayed for.

Cases referred to:-

(1) *Inwards & Ors.* v. *Baker* [1965] 1 All E.R. 446.

(2) *Ooi Ai Seng* v. *Chan Lin Lam* [1973] 2 M.L.J. 20 & 21.

CIVIL SUIT.

R. Rajasingam for the plaintiff.

Sam Mathuram for the defendants.

Cur. Adv. Vult.

Arulanandom J.: This is an application by notice of motion for summary judgment by the plaintiff in the above Civil Suit commenced by writ of summons against the defendants for the following reliefs: —

"INDORSEMENT OF CLAIM

The plaintiff claims against the defendants who are sued both as the Administrators of the Estate of Gopal son of Muthu Cavunder alias M. Gopal son of Muthu deceased and in their respective personal capacities —

(1) A Declaration that premises Nos: 3141 and 3142 and premises No: 1600 Sungei Myor Road, Butterworth, Province Wellesley, erected on land known as Holding No. 291, Bandar Butterworth section 3, State of Penang form part of the said land, being attached to the earth surface of the said land, and as such is the property of the plaintiff;

(2) An Order that the defendants or any of them or any person or persons claiming through or under them or any of them do deliver possession of the said premises to the plaintiff;

(3) Damages and/or mesne profits;
(4) Further or other relief and
(5) Costs."

It is not disputed by the defendants that the plaintiff is the legal registered proprietor of the land and hereditaments known as Holding No. 291, Bandar Butterworth Section 3, Penang on which the three houses stand.

It is also not disputed

(1) that House No. 1600 was erected by one Gopal s/o Muthu Cavunder (since deceased) in the year 1963 and that the defendants are administrators of the estate;

(2) that the houses Nos. 3141 and 3142 were erected by one Lingam s/o Gopal in the year 1974;

(3) that the said three houses do not come under the purview of the Control of Rent Ordinance 1966.

The houses are constructed of brick and planks and by the nature of their construction are permanently affixed to the land. Hence by virtue of section 5 of the National Land Code 1965 which states that "land" includes "all things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface," the said three houses become part of the land and the ownership vests in the owner of the land.

There was no evidence of terms under which the said houses were built. The plaintiff denies having given any rights to the defendants on the land but the fact that she signed the plans for the building would justify an inference that she permitted the building of the houses.

The defendants wish the court to infer that by permitting the said houses to be built, the plaintiff had agreed that (1) that said Gopal (deceased) and his heirs and beneficiaries would be able to occupy and live in House No. 1600 as long as they wished and (2) that Lingam s/o Gopal would be able to live and rent out buildings Nos. 3141 and 3142 as long as he wished.

The defendants claimed that the doctrine of equitable estoppel applied and reliance was placed on Lord Denning's comments in the case of *Inwards & Ors.* v. *Baker*[1] cited in the case of *Ooi Ai Seng* v. *Chan Lin Lam*[2] where Lord Denning states:

"... in this case, even though there is no binding contract to grant any particular interests to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do. In this case it is quite plain that the father allowed an expectation to be created in the son's mind that the bungalow was to be his home. It was to be his home for his life or, at all events, his home as long as he wished it to remain his home. It seems to me, in the light of that equity, that the father could not in 1932 have turned to his son and said: 'You are to go. It is my land and my house'. Nor could he at any time thereafter so long as the son wanted it as his home."

But one must always realise that in interpreting land laws in this country, one should always bear in mind that land laws are governed by the National Land Code which does not allow the law to be tempered by equity.

In this case no ground rental was paid in spite of the fact that second defendant was collecting rents. The defendants were at the most gratuitous licensees and in the case of the first defendant the licence granted to her husband died with her husband. The house No. 1600 did not form part of the estate of Gopal for being an immovable it was part of the land of which only the plaintiff was proprietor. To hold otherwise would be in direct conflict with the principles of registered proprietorship of land under the National Land Code.

Again the defendants claim that houses Nos. 3141 and 3142 were built by one Lingam, and hence they are in no position to challenge the right to possession of the plaintiff who is the registered proprietor of the land and they are only the administrators of the estate of Gopal (deceased) who had no interest whatsoever in houses Nos. 3141 and 3142.

Under the provisions of the National Land Code the title of the registered proprietor is indefeasible unless it is obtained by fraud, mistake, undue influence, etc. In this case there is no such allegation.

And it is clear the defendants cannot resist the declaration prayed for.

It is not for the court to speculate, but if the defendants were asking for leave to remove the bricks and planks used in the construction of the houses equitable principles may have been invoked. But as the pleadings stand the defendants must fail.

The defendants also appeal against the decision to allow summary judgment and claim there are issues to be tried and the case should have gone for trial. There is no merit whatsoever in this argument. The facts are undisputed. On the facts as alleged by the defendants, and accepting all of them, the court will still have no alternative but to give judgment to the plaintiff on the law. The issue here is purely one of law. To allow this case to go for trial would be merely to prolong the determination and take up valuable time of the court which could usefully be spent on other matters.

For the reasons given above judgment was entered for the plaintiff.

Claim allowed.

Solicitors: *R. Rajasingam & Co.; Mathuram & Co.*